APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,946	10/24/2003	Konstantin Levit-Gurevich	30320/17232	2114

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EXAMINER
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ART UNIT	PAPER NUMBER
2128	

MAIL DATE	DELIVERY MODE
03/20/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

		Application No.	Applicant(s)
Advisory Action *Before the Filing of an Appeal Brief*		10/692,946	LEVIT-GUREVICH ET AL.
		Examiner	Art Unit	
		Saif A. Alhija	2128	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>07 March 2007</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ They raise the issue of new matter (see NOTE below);

   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

     NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: <u>1 and 4-22</u>.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.

13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because:

The 112 2nd rejection of claims 21 and 22 are withdrawn in view of Applicants amendment.
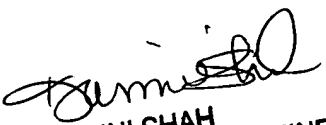
In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant argues that Devine does not utilize complete virtualization in a direct execution environment. First, the Examiner notes that the claim recites "a plurality of virtual machines in a virtual environment, the virtual environment being a direct execution environment, hereafter DEE." The claim does not recite "complete virtualization" utilizing DEE. Devine in Column 5, Lines 20-31 states that directly executable VM instructions are executed using the DEE. This reads on the limitation as presented. Applicants have not addressed instructions which are non-directly executable and there is no support for these instructions being executable by a DEE since by definition they are non-directly executable.

Applicant argues that the VMM of Devine does not operate on top of an operating system. However the section cited by Applicants, Column 3, Line 65 - Column 4, Line 5, refers to Legacy Operating Systems as well as Legacy VMM's, see Column 3, Line 52-64. In addition, the claims do not recite a VMM operating on top of an operating system. The claim recites transferring code from the virtual environment to the operating system. Devine discloses in Column 8, Lines 13-19 that an embodiment of the invention includes "a system that has an existing operating system and that includes the VMM..." Therefore, and in addition to Examiners response in Section 2.vi in the previous response, Devine teaches control entry to and exit from the plurality of VM's. The Examiner explained in Section 2.vi that the VMM utilizes a single monitor with respect to at least memory/processor interaction when supporting multiple VM's.

Applicant argues that Devine does not teach certain actions in response to an end of instructions quota event. The Examiner clearly explained in the previous rejection that an end of quota event is interpreted to be a situation where a virtual machine is no longer active either due to lack of resources, lack of code execution, or lack of use and another virtual machine can be "run" in its absence. The Examiner anticipated several possible amendments and explained that as can be seen in Devine in at least the MMU of the VMM which deals with memory allocation for the VM's. The MMU prevents incorrect memory mapping and supports handling/switching between multiple VM's with respect to memory allocation/de-allocation to the multiple VM's that require it. See Column 11, Line 45 - Column 12, Line 67. This reads on the end of instructions quota event as well as switching.

Applicant argues that the Examiner has not explained his position with regards to certain citations. First, the Examiner respectfully points out that the citations of particular columns and line numbers in the reference applied to the claims for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant to fully consider the references in their entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner. Second, the Applicant uses Examiners citation of Column 25 as exemplary of lack of explanation. The Examiner respectfully points out that the cited section of Devine clearly indicates that a VMM can support multiple VM's. The cited section was placed directly in the previous action for the benefit of Applicants and a corresponding explanation was provided.

KAMINI SHAH
SUPERVISORY PATENT EXAMINER